Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

RAMONCITA O. SENADOR,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES and CYNTHIA JAIME,
Respondents.

G.R. No. 201620

Present:

VELASCO, JR., *J.*, Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

March 6, 2013

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DECISION

VELASCO, JR., *J.*:

This is a Petition for Review on Certiorari under Rule 45 seeking the reversal of the May 17, 2011 Decision[1] and March 30, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR. No. 00952

In an Information dated August 5, 2002, petitioner Ramoncita O. Senador (Senador) was charged before the Regional Trial Court (RTC), Branch 32 in Dumaguete City with the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code,[3] viz:

> That on or about the 10th day of September 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said **accused, having obtained and received from one Cynthia Jaime various kinds of jewelry valued in the total amount of P705,685.00** for the purpose of selling the same on consignment basis

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[1] *Rollo*, pp. 44-55. Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando.

[2] Id. at 61-63.

[3] Art. 315. *Swindling (estafa).* - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or another property.

> with express obligation to account for and remit the entire proceeds of the sale if sold or to return the same if unsold within an agreed period of time and despite repeated demands therefor, did, then and there willfully, unlawfully and feloniously **fail to remit proceeds of the sale of said items or to return any of the items that may have been unsold to said Cynthia Jaime** but instead has willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to his/her own use and benefit **to the damage and prejudice of said Cynthia Jaime in the aforementioned amount of P705,685.00**.[4] (Emphasis supplied.)

Upon arraignment, petitioner pleaded "not guilty." Thereafter, trial on the merits ensued.

The prosecution's evidence sought to prove the following facts: Rita Jaime (Rita) and her daughter-in-law, Cynthia Jaime (Cynthia), were engaged in a jewelry business. Sometime in the first week of September 2000, Senador went to see Rita at her house in Guadalupe Heights, Cebu City, expressing her interest to see the pieces of jewelry that the latter was selling. On September 10, 2000, Rita's daughter-in-law and business partner, Cynthia, delivered to Senador several pieces of jewelry worth seven hundred five thousand six hundred eighty five pesos (PhP 705,685).[5]

In the covering Trust Receipt Agreement signed by Cynthia and Senador, the latter undertook to sell the jewelry thus delivered on commission basis and, thereafter, to remit the proceeds of the sale, or return the unsold items to Cynthia within fifteen (15) days from the delivery.[6] However, as events turned out, Senador failed to turn over the proceeds of the sale or return the unsold jewelry within the given period.[7]

Thus, in a letter dated October 4, 2001, Rita demanded from Senador the return of the unsold jewelry or the remittance of the proceeds from the sale of jewelry entrusted to her. The demand fell on deaf ears prompting Rita to file the instant criminal complaint against Senador.[8]

During the preliminary investigation, Senador tendered to Rita Keppel Bank Check No. 0003603 dated March 31, 2001 for the amount of PhP 705,685,[9] as settlement of her obligations. Nonetheless, the check was later dishonored as it was drawn against a closed account.[10]

Senador refused to testify and so failed to refute any of the foregoing evidence of the prosecution, and instead, she relied on the defense that the facts alleged in the Information and the facts proven and established during the trial differ. In particular, Senador asserted that the person named as the offended party in the Information is not the same person who made the

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[4] *Rollo*, p. 46
[5] Id. at 47.
[6] Id.
[7] Id.
[8] Id.
[9] Folder of exhibits, p. 21.
[10] Id. at 22.

demand and filed the complaint. According to Senador, the private complainant in the Information went by the name "Cynthia Jaime," whereas, during trial, the private complainant turned out to be "Rita Jaime." Further, Cynthia Jaime was never presented as witness. Hence, citing *People v. Uba, et al.*[11] (*Uba*) and *United States v. Lahoylahoy and Madanlog* (*Lahoylahoy*),[12] Senador would insist on her acquittal on the postulate that her constitutional right to be informed of the nature of the accusation against her has been violated.

Despite her argument, the trial court, by Decision dated June 30, 2008, found Senador guilty as charged and sentenced as follows:

> WHEREFORE, the Court finds RAMONCITA SENADOR guilty beyond reasonable doubt of the crime of ESTAFA under Par. 1 (b), Art. 315 of the Revised Penal Code, and is hereby sentenced to suffer the penalty of four (4) years and one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum and to indemnify the private complainants, RITA JA[I]ME and CYNTHIA JA[I]ME, the following: 1) Actual Damages in the amount of P695,685.00 with interest at the legal rate from the filing of the Information until fully paid; 2) Exemplary Damages in the amount of P100,000.00; and 3) the amount of P50,000 as Attorney's fees.

Senador questioned the RTC Decision before the CA. However, on May 17, 2011, the appellate court rendered a Decision upholding the finding of the RTC that the prosecution satisfactorily established the guilt of Senador beyond reasonable doubt. The CA opined that the prosecution was able to establish beyond reasonable doubt the following undisputed facts, to wit: (1) Senador received the pieces of jewelry in trust under the obligation or duty to return them; (2) Senador misappropriated or converted the pieces of jewelry to her benefit but to the prejudice of business partners, Rita and Cynthia; and (3) Senador failed to return the pieces of jewelry despite demand made by Rita.

Further, the CA—finding that *Uba*[13] is not applicable since Senador is charged with estafa, a crime against property and not oral defamation, as in *Uba*—ruled:

> WHEREFORE, the June 30, 2008 Judgment of the Regional Trial Court, Branch 32, Dumaguete City, in Criminal Case No. 16010, finding accused appellant guilty beyond reasonable doubt of Estafa is hereby AFFIRMED in toto.
>
> SO ORDERED.

Senador filed a Motion for Reconsideration but it was denied in a Resolution dated March 30, 2012. Hence, the present petition of Senador.

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[11] 106 Phil. 332 (1959).
[12] 38 Phil. 330 (1918).
[13] Supra note 11.

The sole issue involved in the instant case is whether or not an error in the designation in the Information of the offended party violates, as petitioner argues, the accused's constitutional right to be informed of the nature and cause of the accusation against her, thus, entitling her to an acquittal.

The petition is without merit.

At the outset, it must be emphasized that variance between the allegations of the information and the evidence offered by the prosecution does **not** of itself entitle the accused to an acquittal,[14] more so if the variance relates to the designation of the offended party, a mere formal defect, which does not prejudice the substantial rights of the accused.[15]

As correctly held by the appellate court, Senador's reliance on *Uba* is misplaced. In *Uba*, the appellant was charged with oral defamation, a crime against honor, wherein the identity of the person against whom the defamatory words were directed is a material element. Thus, an erroneous designation of the person injured is material. On the contrary, in the instant case, Senador was charged with estafa, a crime against property that does not absolutely require as indispensable the proper designation of the name of the offended party. Rather, what is absolutely necessary is the correct identification of the **criminal act charged in the information**.[16] Thus, in case of an error in the designation of the offended party in crimes against property, Rule 110, Sec. 12 of the Rules of Court mandates the correction of the information, not its dismissal:

> SEC. 12. *Name of the offended party*.—The complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known. If there is no better way of identifying him, he must be described under a fictitious name.
>
> (a) **In offenses against property**, **if the name of the offended party is unknown, the property must be described with such particularity as to properly identify the offense charged**.
>
> (b) If the true name of the person against whom or against whose property the offense was committed is thereafter disclosed or ascertained, **the court must cause such true name to be inserted in the complaint or information and the record**. x x x (Emphasis supplied.)

It is clear from the above provision that in offenses against property, the materiality of the erroneous designation of the offended party would depend on whether or not the subject matter of the offense was sufficiently described and identified.

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[14] *People v. Catli*, No. L-11641, November 29, 1962, 6 SCRA 642, 647. (Emphasis supplied.)
[15] *Ricarze v. Court of Appeals*, G.R. No. 160451, February 9, 2007, 515 SCRA 302, 321.
[16] Id.; citing *Sayson v. People*, No. L-51745, October 28, 1988, 166 SCRA 680.

Lahoylahoy cited by Senador supports the doctrine that if the subject matter of the offense is **generic** or one which is not described with such particularity as to properly identify the offense charged, then an erroneous designation of the offended party is material and would result in the violation of the accused's constitutional right to be informed of the nature and cause of the accusation against her. Such error, *Lahoylahoy* teaches, **would result in the acquittal** of the accused, viz:

> The second sentence of section 7 of General Orders No. 58 declares that when an offense shall have been described with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial. **We are of the opinion that this provision can have no application to a case where the name of the person injured is matter of essential description as in the case at bar; and at any rate, supposing the allegation of ownership to be eliminated, the robbery charged in this case would not be sufficiently identified.** A complaint stating, as does the one now before us, that the defendants "took and appropriated to themselves with intent of gain and against the will of the owner thereof the sum of P100" could scarcely be sustained in any jurisdiction as a sufficient description either of the act of robbery or of the subject of the robbery. There is a saying to the effect that **money has no earmarks; and generally speaking the only way money, which has been the subject of a robbery, can be described or identified in a complaint is by connecting it with the individual who was robbed as its owner or possessor**. And clearly, when the offense has been so identified in the complaint, the proof must correspond upon this point with the allegation, or there can be no conviction.[17] (Emphasis supplied.)

In *Lahoylahoy*, the subject matter of the offense was money in the total sum of PhP 100. Since money is **generic** and has no earmarks that could properly identify it, the only way that it (money) could be described and identified in a complaint is by connecting it to the offended party or the individual who was robbed as its owner or possessor. Thus, the identity of the offended party is material and necessary for the proper identification of the offense charged. Corollary, the erroneous designation of the offended party would also be material, as the subject matter of the offense could no longer be described with such particularity as to properly identify the offense charged.

The holdings in *United States v. Kepner*,[18] *Sayson v. People*,[19] and *Ricarze v. Court of Appeals*[20] support the doctrine that if the subject matter of the offense is **specific** or one described with such particularity as to properly identify the offense charged, then an erroneous designation of the offended party is not material and would not result in the violation of the accused's constitutional right to be informed of the nature and cause of the accusation against her. Such error **would not result in the acquittal** of the accused.

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[17] Supra note 12, at 336-337.
[18] 1 Phil. 519 (1902).
[19] Supra note 16.
[20] Supra note 15.

In the 1902 case of *Kepner*, this Court ruled that the erroneous designation of the person injured by a criminal act is not material for the prosecution of the offense because the subject matter of the offense, **a warrant**, was sufficiently identified with such particularity as to properly identify the particular offense charged. We held, thus:

> The allegation of the complaint that the unlawful misappropriation of the proceeds of the **warrant** was to the prejudice of Aun Tan may be disregarded by virtue of section 7 of General Orders, No. 58, which declares that **when an offense shall have been described in the complaint with sufficient certainty to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial**. In any event the defect, if defect it was, was one of form which did not tend to prejudice any substantial right of the defendant on the merits, and can not, therefore, under the provisions of section 10 of the same order, affect the present proceeding.[21] (Emphasis supplied.)

In *Sayson*, this Court upheld the conviction of Sayson for attempted estafa, even if there was an erroneous allegation as to the person injured because the subject matter of the offense, **a check**, is specific and sufficiently identified. We held, thus:

> In *U.S. v. Kepner* x x x, this Court laid down the rule that when an offense shall have been described in the complaint with sufficient certainty as to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial as the same is a mere formal defect which did not tend to prejudice any substantial right of the defendant. Accordingly, in the aforementioned case, which had a factual backdrop similar to the instant case, where the defendant was charged with estafa for the misappropriation of the proceeds of a warrant which he had cashed without authority, the erroneous allegation in the complaint to the effect that the unlawful act was to the prejudice of the owner of the cheque, when in reality the bank which cashed it was the one which suffered a loss, was held to be immaterial on the ground that the subject matter of the estafa, the warrant, was described in the complaint with such particularity as to properly identify the particular offense charged. **In the instant suit for estafa which is a crime against property under the Revised Penal Code, since the check, which was the subject-matter of the offense, was described with such particularity as to properly identify the offense charged, it becomes immaterial, for purposes of convicting the accused, that it was established during the trial that the offended party was actually Mever Films and not Ernesto Rufino, Sr. nor Bank of America as alleged in the information**." [22] (Emphasis supplied.)

In *Ricarze*, We reiterated the doctrine espousing an erroneous designation of the person injured is not material because the subject matter of the offense, **a check**, was sufficiently identified with such particularity as to properly identify the particular offense charged.[23]

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[21] Supra note 18, at 526.
[22] Supra note 16, at 693.
[23] Supra note 15.

Interpreting the previously discussed cases, We conclude that in offenses against property, **if the subject matter of the offense is generic and not identifiable**, such as the money unlawfully taken as in *Lahoylahoy*, **an error in the designation of the offended party is fatal and would result in the acquittal of the accused. However, if the subject matter of the offense is specific and identifiable**, such as a warrant, as in *Kepner*, or a check, such as in *Sayson* and *Ricarze*, **an error in the designation of the offended party is immaterial**.

In the present case, the subject matter of the offense does not refer to money or any other generic property. Instead, the information **specified** the subject of the offense as "various kinds of jewelry valued in the total amount of P705,685.00." The charge was thereafter sufficiently fleshed out and proved by the Trust Receipt Agreement[24] signed by Senador and presented during trial, which enumerates these "various kinds of jewelry valued in the total amount of PhP 705,685," viz:

Quality	Description
1	#1878 1 set rositas w/brills 14 kt. 8.5 grams
1	#2126 1 set w/brills 14 kt. 8.3 grams
1	#1416 1 set tri-color rositas w/brills 14 kt. 4.1 grams
1	#319 1 set creolla w/brills 14 kt. 13.8 grams
1	#1301 1 set creolla 2 colors w/brills 20.8 grams
1	#393 1 set tepero & marquise 14kt. 14 grams
1	#2155 1 yg. Bracelet w brills ruby and blue sapphire 14 kt. 28 grams
1	#1875 1 set yg. w/ choker 14 kt. (oval) 14.6 grams
1	#2141 1 yg. w/ pearl & brills 14 kt. 8.8 grams
1	#206 1 set double sampaloc creolla 14 kt. 14.2 grams
1	# 146 1 set princess cut brills 13.6 grams
1	# 2067 1 pc. brill w/ pearl & brill 14 kt. 2.0 grams
1	#2066 1 pc. earrings w/ pearl & brills 14 kt. 4.5 grams
1	#1306 1 set creolla w/ brills 14 kt. 12.6 grams
1	#1851 1 pc. lady's ring w/ brills 14 kt. 7.8 grams
1	# 1515 1 set w/ brills 14 kt. 11.8 grams
1	#1881 1 pc yg. ring w/princess cut 14 kt. 4.1 grams

Thus, it is the doctrine elucidated in *Kepner*, *Sayson*, and *Ricarze* that is applicable to the present case, not the ruling in *Uba* or *Lahoylahoy*. The error in the designation of the offended party in the information is immaterial and did not violate Senador's constitutional right to be informed of the nature and cause of the accusation against her.

[24] Folder of exhibits, p. 11.

Lest it be overlooked, Senador offered to pay her obligations through Keppel Check No. 0003603, which was dishonored because it was drawn against an already closed account. The offer indicates her receipt of the pieces of jewelry thus described and an implied admission that she misappropriated the jewelries themselves or the proceeds of the sale. Rule 130, Section 27 states:

> In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, **an offer of compromise by the accused may be received in evidence as implied admission of guilt**. (Emphasis supplied.)

Taken together, the CA did not err in affirming petitioner's conviction for the crime of estafa.

In light of current jurisprudence,[25] the Court, however, finds the award of exemplary damages excessive. Art. 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good. Nevertheless, "exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions."[26] On this basis, the award of exemplary damages in the amount of PhP 100,000 is reduced to PhP 30,000.

WHEREFORE, the Decision dated May 17, 2011 and Resolution dated March 30, 2012 of the Court of Appeals in CA-G.R. CR. No. 00952, finding Ramoncita Senador guilty beyond reasonable doubt of the crime of ESTAFA under par. 1(b), Art. 315 of the Revised Penal Code, are hereby **AFFIRMED** with **MODIFICATION that the award of exemplary damages be reduced to PhP 30,000**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

[25] *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797.
[26] *Yuchengco v. The Manila Chronicle Publishing Corporation*, G.R. No. 184315, November 28, 2011, 661 SCRA 392, 405-406.

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice